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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,068	09/09/2003	William E. Launius JR.	WEL002	5487
27789	7590	06/16/2005	EXAMINER	
CHARLES C. MCCLOSKEY			CRANE, DANIEL C	
763 S. NEW BALLAS ROAD STE. 170			ART UNIT	
ST. LOUIS, MO 63141			PAPER NUMBER	
			3725	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5A

<b>Office Action Summary</b>	<b>Application No.</b> 10/658,068	<b>Applicant(s)</b> LAUNIUS, WILLIAM E.	
	<b>Examiner</b> Daniel C. Crane	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 6, 9-11, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 9-11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **REJECTION OF CLAIMS ON FORMAL MATTERS**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2, 6, 9, 10, 11 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure fails to disclose the relationship of the half channel diameter and the jaw thickness. Accordingly, the limitation that the diameter of the half channel is less than one tenth the thickness of the jaw contains new matter.

## **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 1, 2, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (1,399,101) in view of Darling (2,793,859). Bowman shows that the female jaw 7 is provided with holes to receive dowels 6 of the male jaw 5 so as to accurately align the two jaws. Bowman does not show that the jaws are provided with dowels in a diagonal configuration. This is a common expedient in the tool art as evidenced by Darling in Figures I and II for the purpose of aligning the jaws longitudinally of the half channel. It would have been obvious to the skilled artisan at the time of the invention to have modified Bowman's dowels 6 by arranging pairs of dowels on either side of the half channel to establish a diagonal alignment so as to align the jaws

Art Unit: 3725

along the longitudinal length of the half channels. As to claim 2, Bowman does not show that the dowels have rounded ends. This is shown by Darling, such facilitating insertion of the dowels into the holes. It would have been obvious to the skilled artisan at the time of the invention to have modified Bowman's dowels by rounding the ends of the dowels using the features taught by Darling for the noted motivation. A recitation of the intended use (i.e., "straighten axles of model cars") of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman (1,399,101) in view of Faull (3,234,838). Bowman illustrates jaws 1, 7 where one of the jaws is provided with dowels and the cooperating jaw is provided with dowel holes. Faull shows a dowel/hole construction where one jaw 10 is provided with a dowel 14 and a hole 15 and the cooperating jaw 10.1 is provided with a dowel 14.1 and hole 15.1. This "insures precise registry" (column 2, lines 1-3, of Faull) of the jaws. It would have been obvious to the skilled artisan at the time of the invention to have modified Bowman's dowels and holes by arranging the dowels and holes using the concepts taught by Faull for the noted motivation. The skilled artisan would have recognized the need to round the dowel ends so as to facilitate insertion of the dowels in the holes. This is a well-known concept that allows pins or any elongated material to

be easily threaded into an aperture or hole. See, for example, Darling in Figure II where the dowels (unlabeled) are shown to have rounded terminal ends.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowman and Faull as applied to claims 10 and 11 above, and further in view of Darling (2,793,859). Bowman, as modified, does not show that the jaws are provided with dowels in a diagonal configuration. This is a common expedient in the tool art as evidenced by Darling in Figures I and II for the purpose of aligning the jaws longitudinally of the half channel. It would have been obvious to the skilled artisan at the time of the invention to have modified Bowman's dowels 6 by arranging pairs of dowels on either side of the half channel to establish a diagonal alignment so as to align the jaws along the longitudinal length of the half channel.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Honeycutt (4,116,037) in view of Bowman (1,399,101) and Bowling (6,234,000). Honeycutt illustrates the basic claimed method where a tubing section T, which is usable as a hollow axle, is straightened by pressing two jaws 14, 20 together to impart a straight shape to the axle T. Honeycutt does not use dies having locating dowels and corresponding holes nor does Honeycutt rotate the axle within the dies between successive shaping operations. Bowman clearly shows a shaping operation where the elongated workpiece A is inserted into the jaws, the jaws each having cooperating dowels and holes, and impacting the jaws by a hammer to shape the elongated workpiece A. Such a shaping operation as taught by Bowman facilitates accurate shaping of the workpiece and exerts high driving forces against the jaws thereby shaping the

Art Unit: 3725

elongated workpiece in a simple manner. It would have been obvious to the skilled artisan at the time of the invention to have modified Honeycutt's axle straightening operation where a levered drive is used by using a hammered arrangement with aligning dowels for the above noted motivation. Bowling foresees the need to rotate the tubing to accurately round and straighten the tubing throughout its circumference. It would have been obvious to the skilled artisan at the time of the invention to have modified Honeycutt's method by using a workpiece rotation technique as taught by Bowling so as to fully straighten and round the workpiece throughout its circumference. As to the cleaning and polishing, such would be a normal practice of preparatory procedures and finishing operations. Marking the positions would also have been obvious to the skilled artisan since such is a well recognized by the craftsman trades.

## **RESPONSE TO APPLICANT'S COMMENTS**

In response to applicant's arguments that Bowman and Darling are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Bowman is drawn to a metal shaping tool, which is directly related to applicant's field of endeavor, i.e., axle shaping. Similarly, Darling is considered within the same field of endeavor because Darling is drawn to workpiece shaping and involves press-like tools.

Art Unit: 3725

As to applicant's argument relating to the diagonal arrangement of the dowels/holes, this is clearly shown by Darling in that the dowels (unlabeled) are arranged in paired orientation on each side of the half channel of each jaw, thus, clearly establishing an accurate mating cooperating of the elongated half channels.

As to applicant's argument concerning the size of the half channel relative to the thickness of the jaw, this is considered new matter and as such renders applicant's arguments moot. Even if applicant's arguments were based on specification support, it is the examiner's position that this size relationship is dependent upon how solid the manufacturer wished to design the jaws.

The applicability of Bowling and Honeycutt are considered tenable since both are drawn to elongated workpiece shaping with opposed half channeled jaws. The modification of Honeycutt is made using the concepts taught by Bowling and clearly is not the intent that the modification of Honeycutt be the entirety of Bowling within Honeycutt.

#### **FINAL OFFICE ACTION**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3725

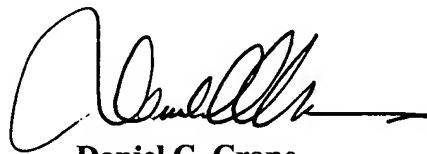
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is (571) 272-4516. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The telephone number of the Examiner's supervisor, Mr. Derris, Banks, is (571)-272-4419,

Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Examiner's FAX number is (571) 273-4516. The Group 3725 Facsimile Center number is (703) 872-9306.

DCCrane  
June 12, 2005



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725